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Death Penalty Urged In Espionage Case

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A conservative public interest organization and two congressmen announced yesterday that they will ask a federal judge to allow the death penalty to be imposed in the case of accused spy John Anthony Walker Jr.

In a brief to be filed today in U.S. District Court in Baltimore, the Washington Legal Foundation argues that the death penalty is applicable despite a 1972 Supreme Court decision that is widely interpreted to have struck down the death penalty provisions in the espionage statute and other laws.

Citing the Supreme Court's ruling, Assistant Attorney General Stephen S. Trott said in an interview last month that life imprisonment is the stiffest sentence federal prosecutors can win for Walker and three others accused of selling secrets to the Soviets.

Assistant U.S. Attorney Michael Schatzow, the prosecutor assigned to prosecute John Walker and his son Michael, described the foundation's arguments for the penalty as "bizarre."

"This is a riot. These guys are great," he said. "I think it's safe to say we have to follow the Supreme Court decision."

The foundation, with the support of Reps. Eldon Rudd (R-Ariz.) and Fred J. Eckert (R-N.Y.), contends in a memorandum to the court that "a careful reading" of *Furman v. Georgia* does "not compel the conclusion that the death penalty could not be applicable in an espionage case."

"There is simply no history of the federal death penalty being applied or a risk that it may be applied to those convicted of espionage for reasons of race, poverty, or other arbitrary reasons that some mem-

bers of the Supreme Court felt were present in sentencing those convicted" of other capital crimes, the memorandum says.

"At worst," it continues, "the constitutional issue is unresolved and this court has an independent duty to resolve this issue."

Paul Kamenar, executive legal director of the foundation, said the judge could use the Walker case to establish whatever guidelines are required by the Supreme Court ruling to make the death penalty provisions of the espionage statute valid.

A previous espionage case throws substantial doubt on how successful the judge would be if he followed Kamenar's suggestions.

The 9th Circuit Court of Appeals last year threw out a pretrial order by a federal district judge in San Francisco which would have allowed the death penalty for James Harper, an engineer ultimately convicted of selling defense secrets to Soviet bloc nations.

The appeals court said judges could not, on their own, set the guidelines needed to comply with the Supreme Court decision. The appeals court ruled the guidelines must be legislatively established.

Kamenar said the 9th Circuit's decision was "a mistake."

He said the foundation's memorandum would also apply to the case of John Walker's son Michael, a Navy seaman who will be tried with his father on charges of supplying the Soviets with classified Navy documents. He said he also expected to file similar memorandums in the case of John Walker's brother, Arthur Walker, and Jerry Whitworth, a California associate.

Burt Neuborne, legal director of the American Civil Liberties Union, described the foundation's action as "not a serious legal endeavor. It's a publicity stunt."